

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-1353V

UNPUBLISHED

MINDY SCHUEHRER, by and through
her legal guardian KELLEY KUHN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: June 6, 2023

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Guillain-
Barre Syndrome (GBS)

Laura Levenberg, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Martin Conway Galvin, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On May 13, 2021, Mindy Schuehrer² filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*³ (the “Vaccine Act”). Petitioner alleges that she suffered Guillain-Barre Syndrome (“GBS”) resulting from an influenza (“flu”) vaccine received on September 19, 2018. Petition at 1. Petitioner further alleges she received the flu vaccine in the United States, her GBS and sequelae lasted for more than six months, and neither Petitioner nor any other party has filed an action or received compensation in the form of an award or settlement for

¹ Because this unpublished Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² On March 13, 2023, the caption was amended to reflect a legal guardianship established for Petitioner (ECF No. 35).

³ National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Petitioner's vaccine-related injuries. Petition at ¶¶ 2, 13-15. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 12, 2022, a ruling on entitlement was issued, finding Petitioner entitled to compensation for GBS. On June 6, 2023, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioner should be awarded \$100,000.00 for pain and suffering and \$2,414.23 to satisfy a State of Michigan Medicaid lien. Proffer at 2-3. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner the following:**

- 1) **A lump sum payment of \$100,000.00 (for pain and suffering) in the form of a check payable to Kelley Kuhn as the legal guardian of Mindy Schuehrer; and**
- 2) **A lump sum payment of \$2,414.23, representing compensation for satisfaction of the State of Michigan Medicaid lien, in the form of a check payable jointly to Kelley Kuhn as the legal guardian of Mindy Schuehrer and:**

**Michigan Department of Health and Human Services
Third Party Liability Division
P.O. Box. 30053
Lansing, MI 48909**

Ms. Kuhn agrees to endorse the check to the Michigan Department of Health and Human Services for satisfaction of the Medicaid lien.

These amounts represent all elements of compensation to which Petitioner is entitled under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

MINDY SCHUEHRER, by and through her
legal guardian KELLEY KUHN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-1353V
Chief Special Master Corcoran
ECF

PROFFER ON AWARD OF DAMAGES

On May 13, 2021, Mindy Schuehrer (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered Guillain-Barre Syndrome (“GBS”) caused by her receipt of an influenza vaccination on September 19, 2018. *See* Petition at 1. On August 12, 2022, the Secretary of Health and Human Services (“respondent”) filed his Rule 4(c) report concluding that petitioner suffered GBS as defined by the Vaccine Injury Table, within the Table timeframe, and that this case is appropriate for compensation. ECF No. 25. Thus, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 26; ECF No. 27. On March 13, 2023, petitioner filed a motion to amend the caption to indicate that Kelley Kuhn had been appointed as her legal guardian. ECF No. 34. On the same date, the Court granted the motion and issued an Order to amend the caption. ECF No. 35.

I. Compensation for Vaccine Injury-Related Items

Based on the evidence of record, respondent proffers that petitioner should be awarded the following:

A. Pain and Suffering

Respondent proffers that petitioner should be award **\$100,000.00** for pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the State of Michigan Medicaid lien in the amount of **\$2,414.23**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Michigan may have against any individual as a result of any Medicaid payments the State of Michigan has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her alleged vaccine-related injury suffered on or about November 6, 2018 under Title XIX of the Social Security Act.

The above amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner be made through two lump sum payments as described below:

- (1) A lump sum payment of **\$100,000.00** in the form of a check payable to Kelley Kuhn as the legal guardian of Mindy Schuehrer.¹

¹ Should Mindy Schuehrer die prior to the entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost earnings.

- (2) A lump sum payment of **\$2,414.23** representing compensation for satisfaction of the State of Michigan Medicaid lien, in the form of a check payable jointly to Kelley Kuhn as the legal guardian of Mindy Schuehrer, and:

Michigan Department of Health and Human Services
Third Party Liability Division
P.O. Box 30053
Lansing, MI 48909.

Ms. Kuhn agrees to endorse the check to the Michigan Department of Health and Human Services for satisfaction of the Medicaid lien.

Respondent recommends that petitioner be awarded lump sum payments as indicated above in the form of a check payable to legal guardian Kelley Kuhn, as legal guardian of Mindy Schuehrer.² Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D’ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

² If for some reason Kelley Kuhn is not authorized by a court of competent jurisdiction to serve as the legal guardian of Mindy Schuehrer at the time a payment pursuant to this Proffer is to be made, then any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal guardian of Mindy Schuehrer upon submission of written documentation of such appointment to the Secretary.

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

/s/ *Martin C. Galvin*
MARTIN C. GALVIN
Trial Attorney, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 305-3071
Martin.Galvin@usdoj.gov

Dated: June 6, 2023